

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2540

Introduced by Assembly Member De La Torre

February 19, 2010

~~An act to amend Section 1324.30 of the Health and Safety Code, relating to public health. An act to amend Section 790.03 of the Insurance Code, relating to health insurance.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2540, as amended, De La Torre. ~~Skilled nursing facilities; Medi-Cal reimbursement; quality assurance fee. Health insurance; postclaims underwriting; unfair and deceptive practices.~~

Existing law prohibits any person in the state from engaging in any trade practices that are defined as unfair methods of competition or unfair or deceptive acts or practices in the business of insurance.

This bill would add engaging in health insurance postclaims underwriting, as defined, to the trade practices that are defined as unfair methods of competition or unfair or deceptive acts or practices in the business of insurance.

~~Existing law, the Medi-Cal Long-Term Care Reimbursement Act, requires the department to implement a facility-specific reimbursement ratesetting system for certain freestanding skilled nursing facilities. Under existing law, reimbursement rates for these facilities are funded by a combination of federal funds and moneys collected pursuant to the above-described uniform quality assurance fee. Existing law provides that these rate methodology provisions shall become inoperative on July 31, 2011, and be repealed on January 1, 2012.~~

~~This bill would make a technical, nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 790.03 of the Insurance Code is amended*
2 *to read:*

3 790.03. The following are hereby defined as unfair methods
4 of competition and unfair and deceptive acts or practices in the
5 business of insurance.

6 (a) Making, issuing, circulating, or causing to be made, issued
7 or circulated, any estimate, illustration, circular, or statement
8 misrepresenting the terms of any policy issued or to be issued or
9 the benefits or advantages promised thereby or the dividends or
10 share of the surplus to be received thereon, or making any false or
11 misleading statement as to the dividends or share of surplus
12 previously paid on similar policies, or making any misleading
13 representation or any misrepresentation as to the financial condition
14 of any insurer, or as to the legal reserve system upon which any
15 life insurer operates, or using any name or title of any policy or
16 class of policies misrepresenting the true nature thereof, or making
17 any misrepresentation to any policyholder insured in any company
18 for the purpose of inducing or tending to induce the policyholder
19 to lapse, forfeit, or surrender his or her insurance.

20 (b) Making or disseminating or causing to be made or
21 disseminated before the public in this state, in any newspaper or
22 other publication, or any advertising device, or by public outcry
23 or proclamation, or in any other manner or means whatsoever, any
24 statement containing any assertion, representation, or statement
25 with respect to the business of insurance or with respect to any
26 person in the conduct of his or her insurance business, which is
27 untrue, deceptive, or misleading, and which is known, or which
28 by the exercise of reasonable care should be known, to be untrue,
29 deceptive, or misleading.

30 (c) Entering into any agreement to commit, or by any concerted
31 action committing, any act of boycott, coercion, or intimidation
32 resulting in or tending to result in unreasonable restraint of, or
33 monopoly in, the business of insurance.

1 (d) Filing with any supervisory or other public official, or
2 making, publishing, disseminating, circulating, or delivering to
3 any person, or placing before the public, or causing directly or
4 indirectly, to be made, published, disseminated, circulated,
5 delivered to any person, or placed before the public any false
6 statement of financial condition of an insurer with intent to deceive.

7 (e) Making any false entry in any book, report, or statement of
8 any insurer with intent to deceive any agent or examiner lawfully
9 appointed to examine into its condition or into any of its affairs,
10 or any public official to whom the insurer is required by law to
11 report, or who has authority by law to examine into its condition
12 or into any of its affairs, or, with like intent, willfully omitting to
13 make a true entry of any material fact pertaining to the business
14 of the insurer in any book, report, or statement of the insurer.

15 (f) Making or permitting any unfair discrimination between
16 individuals of the same class and equal expectation of life in the
17 rates charged for any contract of life insurance or of life annuity
18 or in the dividends or other benefits payable thereon, or in any
19 other of the terms and conditions of the contract.

20 This subdivision shall be interpreted, for any contract of ordinary
21 life insurance or individual life annuity applied for and issued on
22 or after January 1, 1981, to require differentials based upon the
23 sex of the individual insured or annuitant in the rates or dividends
24 or benefits, or any combination thereof. This requirement is
25 satisfied if those differentials are substantially supported by valid
26 pertinent data segregated by sex, including, but not necessarily
27 limited to, mortality data segregated by sex.

28 However, for any contract of ordinary life insurance or individual
29 life annuity applied for and issued on or after January 1, 1981, but
30 before the compliance date, in lieu of those differentials based on
31 data segregated by sex, rates, or dividends or benefits, or any
32 combination thereof, for ordinary life insurance or individual life
33 annuity on a female life may be calculated as follows: (a) according
34 to an age not less than three years nor more than six years younger
35 than the actual age of the female insured or female annuitant, in
36 the case of a contract of ordinary life insurance with a face value
37 greater than five thousand dollars (\$5,000) or a contract of
38 individual life annuity; and (b) according to an age not more than
39 six years younger than the actual age of the female insured, in the
40 case of a contract of ordinary life insurance with a face value of

1 five thousand dollars (\$5,000) or less. “Compliance date” as used
2 in this paragraph shall mean the date or dates established as the
3 operative date or dates by future amendments to this code directing
4 and authorizing life insurers to use a mortality table containing
5 mortality data segregated by sex for the calculation of adjusted
6 premiums and present values for nonforfeiture benefits and
7 valuation reserves as specified in Sections ~~10163.5~~ 10163.1 and
8 10489.2 or successor sections.

9 Notwithstanding the provisions of this subdivision, sex-based
10 differentials in rates or dividends or benefits, or any combination
11 thereof, shall not be required for (1) any contract of life insurance
12 or life annuity issued pursuant to arrangements ~~which~~ that may be
13 considered terms, conditions, or privileges of employment as these
14 terms are used in Title VII of the Civil Rights Act of 1964 (Public
15 Law 88-352), as amended, and (2) tax sheltered annuities for
16 employees of public schools or of tax exempt organizations
17 described in Section 501(c)(3) of the Internal Revenue Code.

18 (g) Making or disseminating, or causing to be made or
19 disseminated, before the public in this state, in any newspaper or
20 other publication, or any other advertising device, or by public
21 outcry or proclamation, or in any other manner or means whatever,
22 whether directly or by implication, any statement that a named
23 insurer, or named insurers, are members of the California Insurance
24 Guarantee Association, or insured against insolvency as defined
25 in Section 119.5. This subdivision shall not be interpreted to
26 prohibit any activity of the California Insurance Guarantee
27 Association or the commissioner authorized, directly or by
28 implication, by Article 14.2 (commencing with Section 1063).

29 (h) Knowingly committing or performing with such frequency
30 as to indicate a general business practice any of the following
31 unfair claims settlement practices:

32 (1) Misrepresenting to claimants pertinent facts or insurance
33 policy provisions relating to any coverages at issue.

34 (2) Failing to acknowledge and act reasonably promptly upon
35 communications with respect to claims arising under insurance
36 policies.

37 (3) Failing to adopt and implement reasonable standards for the
38 prompt investigation and processing of claims arising under
39 insurance policies.

1 (4) Failing to affirm or deny coverage of claims within a
2 reasonable time after proof of loss requirements have been
3 completed and submitted by the insured.

4 (5) Not attempting in good faith to effectuate prompt, fair, and
5 equitable settlements of claims in which liability has become
6 reasonably clear.

7 (6) Compelling insureds to institute litigation to recover amounts
8 due under an insurance policy by offering substantially less than
9 the amounts ultimately recovered in actions brought by the
10 insureds, when the insureds have made claims for amounts
11 reasonably similar to the amounts ultimately recovered.

12 (7) Attempting to settle a claim by an insured for less than the
13 amount to which a reasonable person would have believed he or
14 she was entitled by reference to written or printed advertising
15 material accompanying or made part of an application.

16 (8) Attempting to settle claims on the basis of an application
17 ~~which~~ *that* was altered without notice to, or knowledge or consent
18 of, the insured, his or her representative, agent, or broker.

19 (9) Failing, after payment of a claim, to inform insureds or
20 beneficiaries, upon request by them, of the coverage under which
21 payment has been made.

22 (10) Making known to insureds or claimants a practice of the
23 insurer of appealing from arbitration awards in favor of insureds
24 or claimants for the purpose of compelling them to accept
25 settlements or compromises less than the amount awarded in
26 arbitration.

27 (11) Delaying the investigation or payment of claims by
28 requiring an insured, claimant, or the physician of either, to submit
29 a preliminary claim report, and then requiring the subsequent
30 submission of formal proof of loss forms, both of which
31 submissions contain substantially the same information.

32 (12) Failing to settle claims promptly, where liability has become
33 apparent, under one portion of the insurance policy coverage in
34 order to influence settlements under other portions of the insurance
35 policy coverage.

36 (13) Failing to provide promptly a reasonable explanation of
37 the basis relied on in the insurance policy, in relation to the facts
38 or applicable law, for the denial of a claim or for the offer of a
39 compromise settlement.

1 (14) Directly advising a claimant not to obtain the services of
2 an attorney.

3 (15) Misleading a claimant as to the applicable statute of
4 limitations.

5 (16) Delaying the payment or provision of hospital, medical,
6 or surgical benefits for services provided with respect to acquired
7 immune deficiency syndrome or AIDS-related complex for more
8 than 60 days after the insurer has received a claim for those
9 benefits, where the delay in claim payment is for the purpose of
10 investigating whether the condition preexisted the coverage.
11 However, this 60-day period shall not include any time during
12 which the insurer is awaiting a response for relevant medical
13 information from a health care provider.

14 (i) Canceling or refusing to renew a policy in violation of
15 Section 676.10.

16 (j) *Engaging in postclaims underwriting as defined by Section*
17 *10384.*

18 ~~SECTION 1. Section 1324.30 of the Health and Safety Code~~
19 ~~is amended to read:~~

20 ~~1324.30. This article shall become inoperative on July 31,~~
21 ~~2011, and, as of January 1, 2012, is repealed, unless a later enacted~~
22 ~~statute, that becomes operative on or before January 1, 2012,~~
23 ~~deletes or extends the dates upon which it becomes inoperative~~
24 ~~and is repealed.~~